

# **Exhibit O**



Request for Applicant to Appear for Naturalization Initial Interview			NOTICE DATE September 22, 2005
CASE TYPE N400 Application For Naturalization			INS.A# A 029 512 918
APPLICATION NUMBER ESC*001397382	RECEIVED DATE March 28, 2005	PRIORITY DATE March 28, 2005	PAGE 1 of 1

APPLICANT NAME AND MAILING ADDRESS

RAJKO LJUTICA  
25-84 STEINWAY STREET  
ASTORIA NY 11103

Please come to:

USCIS MANHATTAN CENTER  
26 FEDERAL PLAZA  
USCIS 7TH FLOOR ROOM RM7-700  
MAIN ROOM  
NEW YORK NY 10278

On (Date): Wednesday, November 16, 2005

At (Time): 07:25 AM

You are hereby notified to appear for an interview on your Application for Naturalization at the date, time, and place indicated above. **Waiting room capacity is limited. Please do not arrive any earlier than 30 minutes before your scheduled appointment time.** The proceeding will take about two hours. If for any reason you cannot keep this appointment, return this letter immediately to the INS office address listed below with your explanation and a request for a new appointment; otherwise, no further action will be taken on your application.

If you are applying for citizenship for yourself, you will be tested on your knowledge of the government and history of the United States. You will also be tested on reading, writing, and speaking English, unless on the day you filed your application, you have been living in the United States for a total of at least 20 years as a lawful permanent resident and are over 50 years old, or you have been living in the United States for a total of 15 years as a lawful permanent resident and are over 55 years old, or unless you have a medically determinable disability (you must have filed form N648 Medical Certification for Disability Exception, with your N400 Application for Naturalization).

**You MUST BRING the following with you to the interview:**

- This letter.
- Your Alien Registration Card (green card).
- Any evidence of Selective Service Registration.
- Your passport and/or any other documents you used in connection with any entries into the United States.
- Those items noted below which are applicable to you:

If applying for NATURALIZATION AS THE SPOUSE of a United States Citizen;

- Your marriage certificate.
- Proof of death or divorce for each prior marriage of yourself or spouse.
- Your spouse's birth or naturalization certificate or certificate of citizenship.

If applying for NATURALIZATION as a member of the United States Armed Forces;

- Your discharge certificate, or form DD 214.

If copies of a document were submitted as evidence with your N400 application, the originals of those documents should be brought to the interview.

**PLEASE keep this appointment, even if you do not have all the items indicated above.**

If you have any questions or comments regarding this notice or the status of your case, please contact our office at the below address or customer service number. You will be notified separately about any other cases you may have filed.

**INS Office Address:**

US IMMIGRATION AND NATURALIZATION SERVICE  
USCIS 7TH FLOOR ROOM 7-700  
26 FEDERAL PLAZA  
NEW YORK NY 10278-

**INS Customer Service Number:**

(800) 375-5283

**APPLICANT COPY**



# **Exhibit P**

Department of Homeland Security  
U.S. Citizenship and Immigration Services

# N-652, Naturalization Interview Results

A#: A89 512 918

On 11/16/05, you were interviewed by USCIS officer WENGENROTH, D.A.O.

- ☒ You passed the tests of English and U.S. history and government.
- ☐ You passed the tests of U.S. history and government and the English language requirement was waived.
- ☐ USCIS has accepted your request for a Disability Exception. You are exempted from the requirement to demonstrate English language ability and/or a knowledge of U.S. history and government.
- ☐ You will be given another opportunity to be tested on your ability to \_\_\_\_\_ speak/\_\_\_\_\_ read/\_\_\_\_\_ write \_\_\_\_\_ English.
- ☐ You will be given another opportunity to be tested on your knowledge of U.S. history and government.
- ☒ Please follow the instructions on Form N-14.
- ☒ USCIS will send you a written decision about your application.
- ☐ You did not pass the second and final test of your \_\_\_\_\_ English ability/\_\_\_\_\_ knowledge of U.S. history and government. You will not be rescheduled for another interview for this Form N-400. USCIS will send you a written decision about your application.

A) \_\_\_\_\_ Congratulations! Your application has been recommended for approval. At this time it appears that you have established your eligibility for naturalization. If final approval is granted, you will be notified when and where to report for the Oath Ceremony.

B) \_\_\_\_\_ A decision cannot yet be made about your application.

It is very important that you:

- ☒ Notify USCIS if you change your address
- ☒ Come to any scheduled interview.
- ☒ Submit all requested documents.
- ☒ Send any questions about this application in writing to the officer named above. Include your full name, Alien Registration Number (A#), and a copy of this paper.
- ☒ Go to any Oath Ceremony that you are scheduled to attend.
- ☒ Notify USCIS as soon as possible in writing if you cannot come to any scheduled interview or Oath Ceremony. Include a copy of this paper and a copy of the scheduling notice.

**NOTE:** Please be advised that under section 336 of the Immigration and Nationality Act, you have the right to request a hearing before an immigration officer if your application is denied, or before the U.S. district court if USCIS had not made a determination on your application within 120 days of the date of your examination.

# Exhibit Q



U.S. Department of Homeland Security  
United States Citizenship and Immigration Services  
26 Federal Plaza, Room 700  
New York, NY 10278

Rajko Ljutica  
130 Malcolm X Blvd Apt. 705  
New York, NY 10029

Date: *September 18, 2006*  
Alien#: 29 512 918

### DECISION

On November 16, 2005 you appeared for an examination of your application for naturalization, which was filed in accordance with Section 316 of the Immigration and Nationality Act.

Pursuant to an investigation and examination of your application, it was determined that you are ineligible for naturalization for the following reason(s):

**See Attachment(s)**

If you desire to request a review hearing on this decision pursuant to Section 336(a) of the Act, **you must file a request for a hearing within 30 Days of the date of this notice**. If no request for hearing is filed within the time allowed, this decision is final. A request for hearing may be made to the District Director, with the Immigration and Naturalization office which made the decision, on Form N-336, **Request for Hearing on a Decision in Naturalization Proceedings under Section 336 of the Act, together with a fee of \$265**. A brief or other written statement in support of your request may be submitted with the Request for Hearing.

Sincerely,

*Mary Ann Gantner*  
Mary Ann Gantner  
District Director Services

Enclosure: Form N-336  
Form N-335 (Rev. 10/24/91)N  
Certified mail/RM  
Cc: Atty

Attachment(s) to Form N-335

Applicant: Rajko Ljutica  
Application for Naturalization, Form N-400  
Alien Number: A 29 512 918

Your application is hereby denied in accordance with the Title 8 Code of Federal Regulations  
Section(s) listed below:

**Reason:** Poor Moral Character, Aggravated Felon  
**CFR8 Reference:** Part 316 General Requirements for Naturalization  
Section 316.10 Good Moral Character

General requirements for Naturalization as stated in Section 316.2 state, in part, that an alien must establish that he or she:

(7) For all relevant time periods under this paragraph, has been and continues to be a person of good moral character, attached to the principles of the Constitution of the United States, and favorably disposed toward the good order and happiness of the United States,

Section 101 (f) of the Immigration and Nationality Act states, in part, that, "[f]or the purposes of this Act-No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established, is or was...

(8) one who at any time has been convicted of an aggravated felony...

Section 316.10 (b) further addresses good moral character by specifying, in part, that:

(1) An applicant shall be found to lack good moral character, if the applicant has been:  
(ii) Convicted of an aggravated felony as defined in section 101 (a)(43) of the Act on or after November 29, 1990.

Section 101 (a) of the INA states, in part:

(43) The term "aggravated felony" means...

(M) an offense that

(i) involves fraud or deceit in which the loss to the victim or victims exceeds \$10,000

Rajko Ljutica  
A 29 512 918

**Explanation:**

According to CIS records and certified court documents that you submitted, you were arrested on or about December 23, 1991 for bank fraud. Your involvement in the bank fraud was having your wife at the time, Jillian Nuttbrock, attempt to wire transfer over \$470,000 from accounts at Paine Webber, where she worked, to an account at Manufacturers Hanover Trust that was under your name. On May 26, 1993, you pled guilty to bank fraud related to the aforementioned charge. On December 17, 1993, you were convicted and sentenced to spend 16 months in jail and to serve two years under supervised release. For this conviction, you spent over one year in jail.

According to Section 101 (a)(43)(M)(i) of the INA, stated above, your conviction for bank fraud in 1993 constitutes an aggravated felony.

**Conclusion:**

You have been convicted of an aggravated felony, as defined in INA Section 101 (a)(43)(M)(i), after November 29, 1990, to wit: December 17, 1993. As such, **you are precluded from ever establishing good moral character** for naturalization purposes, pursuant to INA Sections 101 (f)(8) and 8 CFR Section 316.10 (b)(1)(ii). **You are, therefore, ineligible for naturalization and your application for naturalization is denied.**



Department of Homeland Security  
U.S. Citizenship and Immigration Services

**N-336, Request for a Hearing on a  
Decision in Naturalization Proceedings  
(Under Section 336 of the INA)**

<b>For USCIS Only</b>	
Decision: <input type="checkbox"/> Grant <input checked="" type="checkbox"/> Denial <b>MAR 09 2007</b>	Fee: <b>BOND OFFICE</b> <b>OCT 16 2006</b>

**1. In the Matter of:** (Name of Naturalization Applicant)

Rajko Ljutica

File Number:

**A- 029 512 918**

**2. I am filing a request for hearing on the decision dated:**

September 18, 2006

**3. Please check the one block which applies:**

- a. ☐ I am not submitting a separate brief, statement or evidence.
- b. ☒ I am submitting a separate brief, statement and/or evidence with this form.
- c. ☐ I need \_\_\_\_\_ days to submit a brief, statement and/or evidence

to the USCIS. (May be granted only for good cause shown. Explain in a separate letter.)

**4. Person filing request:**

Name (Type or print in black ink.)

Rajko Ljutica c/o Drobenko & Associates, P.C.

Address (Street Number and Name)

(Apt. Number)

25-84 Steinway Street

(City)

(State)

(ZIP Code)

Astoria

New York

11103

Signature

Date (mm/dd/yyyy)

**10-11-06**

- ☒ I am an attorney or representative and I represent the applicant requesting a hearing on a naturalization proceeding. [You must attach a Notice of Entry or Appearance (Form G-28) if you are an attorney or representative and did not previously submit such a form.]

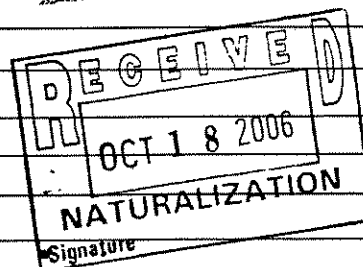
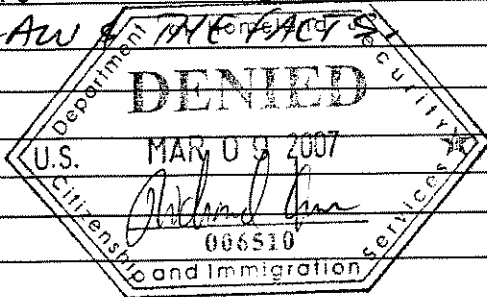
(Person for whom you are appearing)

Rajko Ljutica

**5. Briefly state the reason(s) for this request for a hearing:**

**SEE ATTACHED BRIEF**

**THE SERVICE ERRED AND MISAPPLIED THE RELEVANT  
LAW & THE FACTS**



# **Exhibit R**

OMB No. 1615-0050; Expires 10/31/06

**N-336, Request for a Hearing on a  
Decision in Naturalization Proceedings  
(Under Section 336 of the INA)**

Department of Homeland Security  
U.S. Citizenship and Immigration Services

For USCIS Only

Decision: ☐ Grant  
☒ Denial **MAR 09 2007**

Fee:

**1. In the Matter of:** (Name of Naturalization Applicant)

Rajko Ljutica

File Number:

**A- 029 512 918****2. I am filing a request for hearing on the decision dated:**

September 18, 2006

**3. Please check the one block which applies:**

- a. ☐ I am not submitting a separate brief, statement or evidence.
- b. ☒ I am submitting a separate brief, statement and/or evidence with this form.
- c. ☐ I need \_\_\_\_\_ days to submit a brief, statement and/or evidence to the USCIS. (May be granted only for good cause shown. Explain in a separate letter.)

**4. Person filing request:**

Name (Type or print in black ink.)

Rajko Ljutica c/o Drobenko &amp; Associates, P.C.

Address (Street Number and Name)

(Apt. Number)

25-84 Steinway Street

(City)

(State)

(ZIP Code)

Astoria

New York

11103

Signature

Date (mm/dd/yyyy)

10-11-06

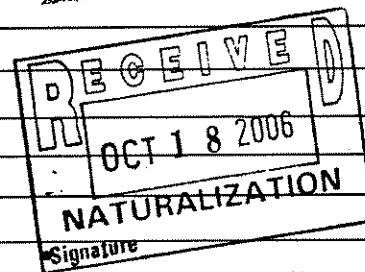
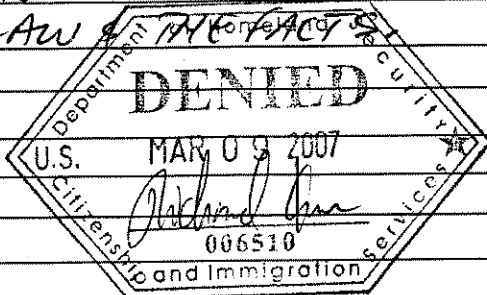
- ☒ I am an attorney or representative and I represent the applicant requesting a hearing on a naturalization proceeding. [You must attach a Notice of Entry or Appearance (Form G-28) if you are an attorney or representative and did not previously submit such a form.]

(Person for whom you are appearing)

Rajko Ljutica

**5. Briefly state the reason(s) for this request for a hearing:**

*SEE ATTACHED BRIEF*  
*THE SERVICE ERRED AND MISAPPLIED THE RELEVANT  
LAW OF THE FACTS*



UNITED STATES DEPARTMENT OF HOMELAND SECURITY  
U.S. CITIZENSHIP & IMMIGRATION SERVICE  
26 FEDERAL PLAZA  
NEW YORK, N.Y. 10278

-----X

In the Matter of

A29 512 918

RAJKO LJUTICA

Application for Naturalization

-----X

BRIEF ON APPEAL

This brief is submitted in support of our appeal submitted herewith (Form N-336). The applicant seeks to appeal the decision of the District Director dated September 18, 2006 with regard to his application for Naturalization, which was denied by the U.S. Citizenship & Immigration Service (hereinafter the "SERVICE") on that date. A copy of the decision is annexed hereto as **Exhibit "A"**. We respectfully request a hearing with regard to this appeal, and adjudication of the appeal in the most expeditious manner possible.

FACTS

The applicant initially submitted an Application for Naturalization (Form N-400) on March 28, 2005. He was called for an interview before the SERVICE at 26 Federal Plaza, New York, N.Y., on November 16, 2005. On said date, the applicant passed all components of the History, English and writing examination with regard to his Naturalization Examination.

Nonetheless, on September 18, 2006, the SERVICE decided that "pursuant to an investigation and examination of your application, it was determined that you are ineligible for naturalization for the following reason(s):

"You have been convicted of an aggravated felony, as defined in INA Section 101 (a)(43)(M)(I), after November 29, 1990, to wit: December 17,

1993. As such, you are precluded from ever establishing good moral character for naturalization purposes, pursuant to INA Sections 101 (f) (8) and 8 CFR Section 316.10 (b) (1) (ii). You are, therefore, ineligible for naturalization and your application for naturalization is denied."

**THE PETITIONER HAS GOOD MORAL CHARACTER**

The SERVICE misapplied the facts to INA as follows:

First and foremost, the Petitioner in 1991 was arrested and charged with attempted, bank fraud.

INA Section 316(b) states in pertinent part:

"The applicant shall bear the burden of establishing by a preponderance of the evidence that he or she meets all requirements for naturalization . . ."

INA Section 316.10(a) states in pertinent part that:

"An application for naturalization bears the burden of demonstrating that, during the statutorily prescribed period, he or she has been and continues to be a person of good moral character."

INA Section 316.10(a)(2) states:

"In accordance with Section 101(f) of the Act, the Service shall evaluate claims of good moral character on a case by case basis taking into account the elements enumerated in this section and the standards of the average citizen in the community of residence. The Service is not limited to reviewing the applicant's conduct during the five years immediately preceding the filing of the application, but may take into consideration, as a basis for its determination, the applicant's conduct and acts at any time prior to that period, if the conduct of the applicant during the statutory period does not reflect that there has been a reform of character from the earlier period or if the earlier conduct and acts appear relevant to a determination of the applicant's present moral character".

In the instant case, the statutory time period is five (5) years preceding the application for naturalization. The Petitioner submitted his application in March 28, 2005.

While the SERVICE may consider acts beyond the five-year period, said inquiry into acts beyond this statutory period may only be considered if [emphasis added herein] the

conduct of the applicant during statutory period does not reflect that there has been a reform of character from the earlier period §316 (e) and INA §316.10 (a) (2).

General requirements for Naturalization, as stated in 8 CFR Section 316.2 (a), state, in part, that an alien must established that he or she:

(7) For all relevant time periods under this paragraph, has been and continues to be person of good moral character, attached to the principles of the Constitution of the United States, and favorably disposed toward the good order and happiness of the United States,

Section 316.10 (b) of 8 CFR further addresses good moral character by specifying, in part, that:

(1) An application shall be found to lack good moral character, if the applicant has been :

(ii) Convicted of an aggravated felony as defined in section 101 (a) (43) of the Act on or after November 29, 1990.

Section 101 (a) INA states in pertinent part that:

(43) The term "aggravated felony" means

(M) an offense that

(I) involves fraud or deceit in which the loss to the victim or victims exceeds \$10,000.00.

An Petitioner shall only be found to lack good moral character where DURING THE STATUTORY FIVE-YEAR PERIOD, the applicant committed one or more crimes involving moral turpitude for which the applicant was convicted. INA § 316.10 (b) (2).

This is not the case here. The applicant's only crime occurred in 1991. This crime was not within the statutory period.

Section 316(a)(3) of the Act, as amended states that an applicant must be of "good moral character" during the statutory five-year period preceding the filing of the

[Naturalization] petition. The applicant's criminal conviction referenced to by the SERVICE was in May 26, 1993 for a crime which took place 1991, over 15 years ago. The Immigration Judge granted the applicant a 212(c) waiver with no finding of an aggravated felony. Since this time the applicant has led a fulfilling, law abiding life and is gainfully employed. Based on the above the applicant is eligible for naturalization and is not barred from establishing good moral character.

The applicant satisfactorily completed his punishment as well as his supervised release. He was granted 212 (C) relief from the Immigration Judge, in 1996 which means that he had satisfied the Immigration Judge that he had indeed reformed himself and that he possessed good moral character warranting 212 (c) waiver. Please see the 212(c) Order of the Immigration Judge, which is attached hereto as **Exhibit "B"**.

The grant of a § 212(c) waiver is discretionary. The leading case discussing the factors to be used is Matter of Marin, 16 I. & N. 581 (B.I.A. 1978). In that case, the BIA articulated the following factors as relevant to the *favorable* exercise of discretion:

1. family ties in the United States-primarily spouse, children, parents;
2. length of residence-especially if applicant entered as child;
3. hardship if deported (even though hardship is not a statutory requirement);
4. United States military service;
5. steady employment history, property ownership, business ties;
6. community service;
7. rehabilitation after criminal conviction; and
8. good moral character references.

In the instant case, it is undisputed that the Petitioner was granted a 212(c) waiver and it is further undisputed that the Judge, who issued the 212(c) waiver examined the relevant factors set forth above, concluded that Mr. Ljutica is an individual, based upon the facts set forth in Marin, entitled to discretionary 212(c) waiver. The judge interviewed applicant for several hours. Based upon the fact that the Judge issued a 212(c) waiver the SERVICE is now precluded and estoppel from arguing that the Petitioner does not have a good moral character. There is nothing that transpired between the granting of the 212(c)



waiver to the time of the Petitioner filing the current N-400 application that would warrant the SERVICE from going beyond the statutory five year period.

Presently, the Petitioner has a steady job since 1995 in the limousine and transportation industry. He obtained a N.Y.C. Taxi & Limousine License in 1995/96. He purchased a cooperative apartment in 2000. Petitioner is the father of a 17 year old USC child and has been paying child support in the amount of \$500.00 per month since 1995 to current. On June 15, 2006 Petitioner has a second USC child. He has not been arrested since 1991. He has been paying taxes and has become a productive member of society. There are no crimes during the past five years and he has indeed established reform since 1991.

Based upon the above there is no reason to inquire beyond the five year statutory period, as reform has been shown and has even been recognized by the Court. Petitioner's one mistake, which occurred over 15 years ago, should not permanently bar him from his dream to become a US citizen.

#### **PETITIONER IS NOT AN AGGRAVATED FELON**

The SERVICE issued a decision advising the petitioner that he is ineligible for naturalization based upon an "aggravated felony" and as such is statutorily unable to be found as a person of good moral character. The SERVICE erred in the findings that Mr. Rajko is ineligible to establish "good moral character" based upon an "aggravated felony". The SERVICE misapplied section 101(a)(43)(M)(I) of the Act, as amended. The Petitioner is not an "aggravated felon" and as such is eligible to become a United States Citizen.

On March 28, 2005, Immigration form N-400, Application for Naturalization was received by the United States Citizenship and Immigration Service. On May 6, 2005, the applicant completed his biometric requirement at the Varick Street Center. On November 16, 2005, applicant and counsel appeared for naturalization interview applicant passed all



tests administered at this time. At this time the Adjudications Officer Wengenroth advised counsel that the applicant's name check was still pending. In addition, in support of the applicant's petitioner for naturalization photographs were submitted, the social security number and the permanent residency card was verified and presented, the divorce disposition was submitted, the dispositions of criminal cases were presented, and the 212 (c) waiver was contained in the file. However, on September 18, 2006, the SERVICE denied the petitioner's naturalization and in doing so stated that:

"Mr. Ljutica was arrested on December 23, 1991 for bank fraud. Your involvement in the bank fraud was having your wife at the time, Jillian Nuttbrock, attempt to wire transfer over \$470,000 from accounts at Paine Webber, where she worked, to an account at Manufacturers Hanover Trust that was under your name. On May 26, 1993; you were convicted and sentenced to spend 16 months in jail and to serve two years under supervised release. For this conviction, you spent over one year in jail. According to section 101(a)(43)(M)(I) of the INA, stated above, your conviction for bank fraud in 1993 constitutes an aggravated felony".

The SERVICE's conclusion that the Petitioner is an "aggravated felon" is without any merit and contrary to well established case law and Section 101 (a) of the INA. To be considered an aggravated felony under INA 101 (a)(43)(M)(1) the two pronged test must be satisfied. The criminal conviction and the loss to the victim or victims have to be satisfied. These elements cannot be separated out for the SERVICE's convenience or personal option. In the instant case there was no loss of funds from any Paine Webber accounts, nor was restitution ordered by the court. Moreover, Mr. Ljutica's conviction was for attempted bank fraud not bank fraud as erroneously stated in the SERVICE's denial of September 18, 2006.

The SERVICE clearly erred when it failed to apply the two prong test under Section 101 (a) INA and found that Mr. Ljutica was convicted of an aggravated felony precluding him from ever establishing good moral character for naturalization purposes.

Section 101 (a) INA clearly states in pertinent part that:

(43) The term "aggravated felony" means

(M) an offense that  
(I) involves fraud or deceit in which the loss to the victim or victims exceeds \$10,000.00.

In the instant case Petitioner was convicted of attempted bank fraud but there was no loss to the victim or victims exceeding \$10,000.00.

The two prong test was applied in Steve Kie Chang v. Immigration & Naturalization Service, 307 F.3d 1185 (9<sup>th</sup> Circuit Court of Appeals 2002). In Chang, the Ninth Circuit Court of Appeals established that there must be a loss to the victim of \$10,000 and that the two prong test must be satisfied. The Court of Appeals held that:

“The INS can only remove Chang if his conviction was for an offense that “involves fraud or deceit in which the loss to the victim or victims exceeds \$10,000.” 8 U.S.C. 1101(a)(43)(M)(I). This particular statutory definition of an aggravated felony therefore has two elements: (1) the offense must involve fraud or deceit, and (2) the offense must also have resulted in a loss to the victim or victims of more than \$10,000.

When compared with the above definition of an aggravated felony. Chang statute of conviction is too broad to be a categorical match. Chang was convicted under the federal bank fraud statute, which provides the following:

Whoever knowingly executes, or attempts to execute, a scheme or artifice-

(1) to defraud a financial institution; or

(2) to obtain any of the moneys, funds, credits, assets, securities, or other property owned by, or under the custody or control of, a financial institution, by means of false or fraudulent pretenses, representations, or promises; shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

18 U.S.C. 1344. Chang’s statute of conviction and the first element of

1101(a)(43)(M)(i)’s definition are plainly coextensive; 1344 clearly requires proof

of fraud (or attempt to defraud) just as the aggravated felony definition does. However, the statute of conviction is significantly broader than the second element of the aggravated felony definition. While 1344 makes it a crime to defraud a financial institution no matter what losses (if any) result, 1101(a)(43)(M)(i) provides that only a fraudulent offense resulting in more than a \$10,000 loss to the victim qualifies as an aggravated felony. Because Chang's statute of conviction therefore proscribes conduct in excess of that covered by 1101(a)(M)(43)(i), Chang's conviction is not an aggravated felony on its face."

In addition, the Court of Appeals for the Third Circuit, in Aubrey Malcolm Munroe v. John Ashcroft 353 F.3d 225 held that "In order to qualify as an aggravated felony conviction, the offense had to involve a loss to a victim or victims that exceeded \$10,000."

In Matter of Matahom Sayson Scully A.K.A Scully Sayson, (April 26, 2004) the Executive Office for Immigration Review (EOIR), Board of Immigration Appeals (BIA) held that:

"Where the statutory definition of the offense is not a "categorical match" to the aggravated felony definition, i.e., encompasses some offenses that would qualify as a aggravated felony and others that would not, a court may employ a "modified categorical inquiry" in which the record of conviction is consulted in order to determine whether the conviction at issue satisfies the fraud and loss requirements of section 101(a)(43)(M)(i)."

As stated the SERVICE must take the record of conviction into account since there is no categorical match to the aggravated felony charge. The SERVICE totally ignored the Petitioner's certificate of disposition relating to the attempted bank fraud. Attached hereto as Exhibit "C" is a copy of the Judgment a Criminal Case. Simply

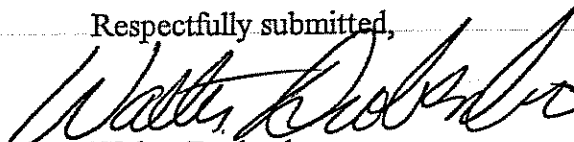
looking at the judgment would reveal the fact that the Mr. Ljutica did not cause a loss in excess of \$10,000. Under the plea agreement the applicant did not plea to a loss of or in excess of \$10,000 nor has the District Court ordered restitution in excess of \$10,000. There was only a special assessment of \$50.00. There is no categorical match and when the record is further reviewed, there is no modified categorical match as determined by the BIA and the 9<sup>th</sup> Circuit Court of Appeals.

Reviewing the record the SERVICE erred, when it determined that the applicant was convicted of fraud. In fact, the applicant was convicted of attempted fraud. When considering an attempt charge the BIA In Matter of Eduardo Dayag Pabalan, (December 09, 2004) held that, "We agree that with the Immigration Judge that paragraph (U) cannot stand alone, and that the offense that the respondent conspired to commit must fit within one of the specific aggravated felony provisions."

Based upon the above case law dealing with the "aggravated felony", the applicant does not meet the categorical analysis or the modified categorical analysis for an aggravated felony as set forth in Chang and therefore cannot be considered an aggravated felon. Moreover, based upon the 212(c) waiver Mr. Ljutica can establish and has established good moral character. Consequently, the applicant must have his petition for Naturalization expeditiously approved and scheduled for Naturalization.

For all of the foregoing reasons, the applicant's appeal should be granted and his application for naturalization be approved at this time. We ask for a speedy adjudication of this case as the error rests in the misreading of the conviction record by the Service.

Respectfully submitted,



Walter Drobenko

# **Exhibit S**



26 Federal Plaza  
New York, New York 10278

Rajko Ljutica  
130 Malcolm X Blvd #705  
New York, NY 10029

DATE: MAR 09 2007

A # 29512918

**DECISION ON REVIEW OF DENIAL OF NATURALIZATION APPLICATION**

The record shows a submitted a Request for a Hearing on a Decision Naturalization Proceedings under Section 336 of the Immigration and Nationality Act on October 16, 2006.

Upon consideration it is determined that the decision previously entered into your case shall be upheld and your application is denied in that:

Note that 8 CFR Section 336.2 (b) states:

“...The reviewing officer shall have the authority and discretion to review the application for naturalization, to examine the applicant, and either to affirm the findings and the determination of the original examining officer or to determine the original decision of the Service in whole or part.”

Also, 8 CFR Section 316.10(a) states in pertinent part that:

“An applicant for naturalization bears the burden of demonstrating that, during the statutory period, he or she continues to be a person of good moral character. This includes the period between the examination and the administration of the oath of allegiance.”

Also, 8 CFR Section 316.10 (b)(ii) states in pertinent part that:

“An applicant shall be found to lack good moral character. If the applicant convicted of an aggravated felony as defined in section 101(a)(43) of the Act on or after 11-29-1990.”

Finally, INA Section 101 (a) (43)(B) states:

(43) The term “aggravated felony” means...

(M) an offense that

(i) involves fraud or deceit in which the loss to the victim or victims exceeds \$10,000.00

**A hearing, which began with the prescribed oath, was scheduled for February 8, 2007 to review the decision to deny your Application for Naturalization.**



26 Federal Plaza  
New York, New York 10278

**Based on the interview conducted on February 8, 2007 for a reconsideration of the decision of your N-400 application for naturalization, a review of your record revealed that you were arrested on or about December 21, 1991 for bank fraud. At that time, you and your former spouse, Jillian Nuttbrock, attempt to wire transfer over \$470,000.00 from accounts at Paine Webber. On December 17, 1993, you were sentenced to 16 months in prison and 2 years under supervised release. For this crime, you spent over one year in jail.**

**An applicant lacks of good moral character if he or she was convicted of an aggravated felony on or after 11-29-1990. You were convicted on December 17, 1993.**

**In your appeal hearing, your attorney stated that there has to be a finding of good moral character because you were granted 212(c) relief on April 29, 1996 by an Immigration Judge. The granted waiver and the termination of your deportation proceedings only prevent you from being deported but it does not preclude the Service from taking into consideration your crime to establish your good moral character. Based on the foregoing, you are unable to demonstrate that you are a person of good moral character. You are permanently bar from citizenship.**

Accordingly, after careful review of the record and all relevant statutes, the decision to deny the application for naturalization must remain unchanged. A review of this decision may sought after before a United States District Court pursuant to Section 301 © of the Immigration and Nationality Act.

Section 310 © of the Immigration and Nationality Act states:

"A person whose application for naturalization under this title is denied, after a hearing an immigration officer under section 336(a), may seek review of such denial before the United States District Court for the district in which such person resides in accordance with Chapter 7 of the Title, United States Code. Such review shall be de novo, and the court shall make its won findings of fact and conclusions of law and shall, at the request of the petitioner , conduct a hearing de novo on the application.

Sincerely,

Andrea J. Quantillo  
District Director  
Citizenship and Immigration Services  
c.c. Walter Drobenko, esq.  
- certified mail -

RK